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Management, Inc., The Spanos Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Hearing Date:
Time:
Dept:

Complaint Filed: June 20, 2007

REQUEST

24 Pursuant to Northern District Local Rule 7-9, the Spanos Defendants respectfully
25 request leave to notice a motion to reconsider. By order issued on April 4, 2008, this court
26 denied the Spanos defendants' entire motion to dismiss. Footnote 2 to this court's order states:

The Ninth Circuit recently addressed the question of when the FHA's two-year statute of limitations begins to run in *Garcia v.*

1 *Brockway*, 503 F.3d 1092, 1101 (9th Cir. 2007). However, the
 2 Ninth Circuit has agreed to rehear the case *en banc*, and therefore
 3 *Garcia* cannot provide any guidance to this Court. See 512 F.3d
 1089 (“The three-judge panel opinion shall not be cited as
 precedent by or to any court of the Ninth Circuit”)

4 Order, p. 7, fn 2.

5 This court’s order also explained:

6 Plaintiffs have clearly alleged a “continuing violation” of the
 7 FHA by the Spanos Defendants, alleging that they “engaged in a
 8 continuous pattern and practice of discrimination against people
 9 with disabilities” since 1991 by “designing and/or constructing”
 10 apartment complexes that deny full access to and use of the
 facilities as required under the FHA, FAC, ¶ 4, and therefore
 none of the claims of the FAC against the Spanos Defendants are
 barred by the statute of limitations.

10 Order, p. 9:15-20.

11 On May 13, 2008, the Ninth Circuit (*en banc*) issued its opinion in *Garcia v. Brockway*
 12 __ F.3d __, 2008 U.S. App. LEXIS 10258 (9th Cir. 2008). The opinion explains that the
 13 continuing violation doctrine is inapplicable to “design and construct” discrimination claims
 14 brought under 42 U.S.C. section 3604(f)(3)(c). See *id.*, 2008 U.S.App. LEXIS 10258 at pp.
 15 *12-*14; and see Proposed Memorandum of Points and Authorities filed concurrently
 16 herewith.

17 CONCLUSION

18 The above change in the law presents good cause for this court to issue an order
 19 allowing the Spanos Defendants to notice a motion for reconsideration.

21 Dated: June 2, 2008

22 FREEMAN, D’AIUTO, PIERCE, GUREV,
 KEELING & WOLF

23 By _____

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